

USDOL/OALJ Reporter

[*Moody v. Tennessee Valley Authority*, 93-ERA-14 \(ALJ Nov. 23, 1993\)](#)
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DATE: NOVEMBER 23, 1994

CASE NO.: 93-ERA-14

In the Matter of

ROBERT H. MOODY
Complainant

v.

TENNESSEE VALLEY AUTHORITY
Respondent

Before: THOMAS M. BURKE

*RECOMMENDED DECISION AND ORDER
DISMISSING COMPLAINT*

Respondent, Tennessee Valley Authority, moves by Motion to Dismiss dated August 23, 1993 that the complaint of Complainant, Robert H. Moody, be dismissed under 29 C.F.R. §§18.29 and 24.5(e) (4) for failure to prosecute.

This complaint was brought under the Reorganization Act of 1974 ("ERA"), 42 U.S.C. §5851 by letter dated October 8, 1992.

A hearing was scheduled on this complaint for February 2 and 3, 1993 in Knoxville, Tennessee. The parties requested a continuance of the hearing because they were in the process of settlement. Their request was granted and the hearing was continued. However, no proposed settlement was ever submitted. The parties were requested to submit a status report on or before August 30, 1993. Complainant did not respond to the request for a status report. Respondent responded to the request by filing the motion to dismiss.

Respondent, in its motion, contends that Complainant has abandoned this complaint in that Complainant has failed to appear for a deposition to which he had agreed; has requested that the February 2 and 3, 1993 hearing be cancelled because he intended to voluntarily dismiss this proceeding; and has repeatedly stated that he intends to dismiss this proceeding.

[PAGE 2]

A Rule to Show Cause was served on Complainant on September 10, 1993 ordering him to show cause why this complaint should not be dismissed or found to be abandoned. Complainant responded to the Rule by letter dated September 28, 1993. He asserted that he needed additional time to retain counsel. However, one year had elapsed since Complainant had filed his complaint with the Department of Labor, a period considered to be more than

sufficient to allow for the retention of legal counsel. Nevertheless, Complainant was granted an additional thirty days to retain counsel. By Order dated October 5, 1993, Complainant was informed that he was required to notify the undersigned administrative law judge by November 5, 1993 that he had retained counsel and desired to pursue this complaint or he would suffer its dismissal. Complainant has not so notified this court.

Section 18.39(b) provides that a request for hearing may be dismissed upon its abandonment ... by the party ... who filed it.

ORDER

AND NOW, this 23rd day of November, 1993, IT
IS HEREBY RECOMMENDED that the complaint of October 8, 1992 by
Robert H. Moody be dismissed.

THOMAS M. BURKE
Administrative Law Judge

TMB:mr

NOTICE: This Recommended Order and the administrative file in this matter will be forwarded for review by the Secretary of Labor to the Office of Administrative Appeals, U.S. Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. The Office of Administrative Appeals has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. See 55 Fed. Reg. 13250 (1990).